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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVID HILL AND KAREN HILL,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.

Case No. C08-5202 BHS/KLS

ORDER DENYING MOTION FOR
ORDER OF DEFAULT AND
DIRECTING FILING OF ANSWER

Before the Court is Plaintiffs' motion for an order of default against Defendants. (Dkt. # 21). Plaintiffs base their motion on Rule 55(a) because although Defendants have been properly served, they have failed to plead or otherwise defend this action. *Id.*, pp. 2-3. Defendants oppose the motion. (Dkt. # 23). Having considered the pleadings and balance of the record, the Court finds that Plaintiffs' motion must be denied, and Defendants should be given a deadline to file their answer.

DISCUSSION

On April 2, 2008, Defendants removed Plaintiffs' Thurston County Superior Court case, cause no. 08-2-00407-1, to this Court. (Dkt. # 1). Pursuant to Fed.R.Civ.P. 81(c) and 6(a)(2),

1 Defendants' responsive pleading was then due on or before April 9, 2008. Defendants' filed a
2 Fed.R.Civ.P. 12(b)(6) motion to dismiss in lieu of an answer asserting failure to state a claim upon
3 which relief can be granted on April 9, 2008. (Dkt. # 5). Under the Federal Rules of Civil
4 Procedure, this motion served as the Defendants' responsive pleading. *Id.*

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6 On August 6, 2008, the Court re-noted Defendants' motion to dismiss as a motion for
7 summary judgment with a hearing date of September 5, 2008. (Dkt. # 18). The Court did so in
8 accordance with Fed.R.Civ.P. 12(d) as Plaintiffs had submitted documentary evidence in support of
9 their objections to Report and Recommendation. (Dkt. # 17). However, as no final ruling was
10 made by the District Court on Defendants' motion to dismiss, the deadline imposed by Fed.R.Civ.P.
11 12(a)(4)(A) was not initiated. Therefore, Defendants are not in default of an answer.

12 Accordingly, it is **ORDERED**:

- 13
14 (1) Plaintiffs' motion for an order of default against Defendants (Dkt. # 23) is **DENIED**;
15 (2) Defendants are directed to file an Answer to Plaintiffs' Complaint **within twenty**
16 **(20) days** of the date of this Order; and
17 (3) The Clerk is directed to send copies of this Order to both Plaintiffs and counsel for
18 Defendants.

19 DATED this 23 day of September, 2008.

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23 Karen L. Strombom
24 United States Magistrate Judge